GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17047-A of 33 P St. LLC, pursuant to 11 DCMR § 3103.2 for a variance from the off-street parking requirements under § 2101.1 (parking schedule), to allow the conversion of a warehouse to an entertainment night club in the C-3-C district at 33 Patterson St., N.E. (Square 672, Lot 255)

HEARING DATE: September 9, 2003
DECISION DATE: October 7, 2003
DATE OF DECISION OF RECONSIDERATION: February 3, 2004

ORDER DENYING RECONSIDERATION

On January 5, 2004, 30/60 M Street Associates, L.P., (30/60)[1] moved for reconsideration of the Board of Zoning Adjustment's (Board) December 23, 2003 order granting an off-street parking variance to 33 P St. LLC. (33 P St or the applicant), alleging specific errors in the Board's order pursuant to 11 DCMR § 3126.4. On January 12, 2004, 33 P St. filed its opposition to the request for reconsideration. *See*, 11 DCMR § 3126.5. At a decision meeting on February 3, 2004, the Board voted to deny 30/60's motion for reconsideration

30/60 sets forth three separate errors allegedly made by the Board: (1) the Board lacked a factual basis upon which to conclude that adequate off-site parking existed; (2) the Board erred in concluding that the applicant had entered into a parking lease with the adjoining property owner; and (3) the Board erred in concluding that the granting of the variance would not result in any substantial detriment to the public good. For reasons that will be explained below, the Board disagrees and denies the motion for reconsideration.

(1) The Board had ample basis to find that the applicant could provide adequate off-site parking

30/60 alleges that the Board lacked a basis to find that the applicant could provide adequate off-site parking. This assertion is incorrect. Nearly the entire public hearing revolved around this question. The applicant not only proffered that it would provide off-site spaces, it represented that it would provide 105 spaces on lots at a specific location immediately adjacent to the proposed night club. The applicant also submitted a detailed "Parking Management Plan" prepared by a traffic consultant, and as stated in Finding of Fact No. 6, the Parking Management Plan reported that there were several surface parking lots in the nearby vicinity of the applicant's property. In addition, there was evidence of record that off-street parking spaces would become available after working

[1] 30/60 was a party in opposition to the variance request.

hours between 5:00 and 6:00 pm., the primary hours during which the proposed night club would be in use. 30/60 argues there was no evidence – and thus no finding – that these spaces would remain available for the duration of the evening. This argument misses the point. The applicant maintained throughout the hearing that the uses surrounding the proposed night club were daytime office uses. It was precisely for this reason that these surrounding property owners would be able to lease their parking spaces during the evening.

(2) The Board did not err in concluding that the applicant would provide 100 nearby off-site parking spaces

30/60 alleges that the Board had no basis for concluding that the applicant had entered into a parking lease with the adjoining property owner. Again, 30/60 misses the point. The Board made a conscious decision during its deliberation of this case that it would not require proof of a binding lease agreement before granting the variance. Rather, the Board determined to grant the variance subject to the applicant's providing 100 off-site spaces whenever the club was operating (See, Decision and Order, Condition No. 2). The Board did require the applicant to enter into a binding written lease, but only as a condition to obtaining its certificate of occupancy, not as condition for obtaining the variance (See, Decision and Order, Condition No. 3). In any event, the Board did have before it a letter which, on its face, purported to be a lease. To be sure, the letter may not have been written by the property owner, as pointed out by 30/60.[2] But that fact does not in any way diminish the applicant's obligations under the Board's order to provide off-site parking. Whether the spaces leased will be those identified in the proffered letter, or some other off-site spaces, the applicant is required under the order to provide the required parking and enter into a binding lease.

(3) The Board did not err in concluding that the variance would not result in any substantial detriment to the public good

30/60 alleges that the Board had no basis for concluding that the variance would result in no substantial detriment to the public good. In support of this contention it states: "...the [a]pplicant has not satisfactorily established that it can and will provide the parking which all agree must be provided". But as explained above, the applicant proffered that it would provide the required parking and the Board, in turn, required it as a condition to obtaining a certificate of occupancy. Of course, a finding of "no substantial detriment to the public good" is necessarily premised upon a projection, and the Board recognized this in its Decision and Order by limiting the duration of the variance. The Board specifically stated:

> "The Board's finding of no substantial detriment to the public good is based, in large part, upon a projection of the availability of daytime parking spaces, the impact of a future Metro Station, and the applicant's promise to

[2] The letter was written by the DC Department of Housing and Community Development Employee Association regarding space owned by the Government of the District of Columbia.

> maintain parking spaces off-site. Because this is an area in transition, the Board is limiting the time in which the variance will remain in effect to five years..."

Given the projections made, the conditions upon which this variance was granted, and its five year term, the Board did not err in concluding as it did that the variance would not result in any substantial detriment to the public good.
For these reasons, it is hereby **ORDERED** that the Motion for Reconsideration is **DENIED.**

VOTE: **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, David A. Zaidain and John G. Parsons (by absentee ballot) to deny the motion)

Vote taken on February 3, 2004

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 19 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT. SG/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17047-A

As Director of the Office of Zoning, I hereby certify and attest that on APR 19 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

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Director, Office of Zoning